IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5856 OF 2005

Suresh Kalyanji Bhagat. ... Applicant
Versus.
State of Maharashtra. ... Respondent.

Shri A.H.H.Ponda for the Applicant.

Ms.M.M.Deshmukh, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 3rd October, 2005.

P.C.:

1. Heard the learned Counsel for the Applicant and the learned A.P.P. for the State. The Applicant is apprehending arrest in connection with an offence registered under sections 4 and 5 of the Prevention of Gambling Act, and section 25(c) of the Indian Telegraph Act. The learned Advocate for the Applicant submitted that except for offence under section 25(c) of the Indian Telegraph Act, the other offences registered are bailable offences. He invited my attention to paragraph 4 of the order passed by the learned Sessions Judge. He submitted that the observation made in the said paragraph shows that a case was made out for grant of anticipatory bail. He submitted that the learned Judge has misinterpreted the decision of the Apex Court in the case reported in AIR 1996 SC P.1042 (Salauddin v/s. State of Maharashtra). He submitted that the order of

the learned Sessions Judge is contrary to section 438 of the Code of Criminal Procedure, 1973.

2. The learned A.P.P. on behalf of the State did not dispute that except for section 25(c) of the Indian Telegraph Act all offences registered against the Applicant are bailable offences. The learned A.P.P. did not dispute the correctness of the observations made in paragraph 4 of the order of the Sessions Court. However, the learned A.P.P. contended that the Applicant is not present in this Court though a specific direction was given on the earlier date.

3. The learned Advocate for the Applicant pointed out that the Applicant is not present as attempt is being made to falsely implicate and arrest the Applicant in a number of cases.

4. It must be noted here that it is an admitted position that save and except the offence under section 25(c) of the Indian Telegraph Act, all other offences are bailable offences. In so far as the offence under section 25(c) is concerned, the learned Sessions Judge has observed thus:

> "4. Having considered the rival contentions, I am of the view that as yet there is still

question mark about application of section 25(c) of the Indian Telegraph Act against the Applicant. At the same time the case is still at the investigation stage and as urged by the APP Shri Hinge, the police should be given some time to collect further material in connection with the allegations in this case. Under these circumstances, without entering into merits of the rival contentions further, I deem it fit to adopt the course suggested by Their Lordships of the Apex Court in the Judgment in the matter of Salauddin Abdulsamad Shaikh v/s. State of Maharashtra reported in AIR 1996 SC 1042."

Thus what has been observed by the learned Sessions Judge is that there is a question mark about the applicability of section 25(c) of the Indian Telegraph Act against the Applicant. In fact the learned Sessions Judge has recorded a submission of the learned A.P.P. that the Police should be given some time to collect further material in connection with the allegation. It is not in dispute that as of today, there is no sufficient material on record to apply section 25(c) of the Indian Telegraph Act against the Applicant. If this is the state of affairs, the Applicant will be subjected undue harassment if he is arrested and it cannot be said that the Application is liable to be rejected only on

the ground that the Applicant is not present today. It must be stated here that while granting ad-interim relief on 8th September 2005, no specific direction was given to the Applicant to remain present. The said direction was issued on 16th September 2005. On the last date, the Applicant was admittedly present. On the last date no direction was specifically issued directing the Applicant to remain present today. Stringent condition can be imposed for grant of anticipatory bail.

5. Hence the following order is passed:

(i) In the event of the arrest of the Applicant in connection with C.R.No.II-112 of 2005 registered at Vashi Police Station, Navi Mumbai, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.25,000/- with one or two sureties of like amount.

(ii) The Bail is granted subject to condition that the Applicant will attend the concerned Police Station twice a week, commencing from 10th October 2005, till filing of the charge sheet and will cooperate for the investigation.

(iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/ Investigating Agency. The Applicant shall not tamper with the prosecution evidence.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) This order will enure to the benefit of the Applicant only till charge sheet is filed. Thereafter he will be free to apply to the appropriate Court for appropriate relief.

(vi) Application is disposed of in above terms.

(vii) The parties to act upon an authenticated copy of this order.

Judge.